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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice-MVC-2013-02; Docket 2013-0081; Sequence 2]

Leasing versus Renting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for information.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking information that will assist in determining if there is a distinction between leasing and renting that is useful for the purposes stated in the Federal Acquisition Regulation (FAR). This Request for Information (RFI) does not address real property or its leasing.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: ADDRESSES: Submit comments by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.
Submit comments via the Federal eRulemaking portal by searching for "Notice-MVC-2013-02". Select the link

"Submit a Comment" that corresponds with "Notice-MVC-2013-02". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Notice-MVC-2013-02; Leasing versus Renting" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street, NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only in all correspondence related to this request. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 for clarification of content. The Regulatory Secretariat at 202-501-4755 for information pertaining to status or publication schedules.

SUPPLEMENTARY INFORMATION:

The Councils are seeking public input on whether there is a distinction between renting and leasing that would be useful in performing the analysis required at FAR subpart 7.4 to determine the most cost effective approach, all factors considered. This RFI does not address real

property or its leasing. "Real property" is defined in the Federal Management Regulation (FMR) at 41 CFR 102-71.20, and generally describes buildings and land.

Some have suggested that there is no legal distinction between leasing and renting per the Uniform Commercial Code and that any distinctions in practice are irrelevant to FAR subpart 7.4, which is seeking the most cost effective method. Others have suggested there are distinctions in the terms and conditions that would be useful to recognize. We note that the FMR at 41 CFR Part 102-34 "Motor Vehicle Management" provides brief definitions of commercial vehicle rentals and leases at 41 CFR 102-34.35, with the only difference being that a rental is for less than 120 continuous days while a lease is 120 continuous days or more. We also note that at FAR subpart 8.11, Leasing of Motor Vehicles, the definition of "leasing" of motor vehicles uses "hire" and "rent" as synonyms for leasing.

The Councils are also seeking any additional information to improve the guidance at FAR subpart 7.4. The Government Accountability Office (GAO) issued a report dated February 7, 2012, entitled "Air Force and Interior Can Benefit from Additional Guidance When Deciding Whether to Lease or Purchase Equipment" (GAO-12-281R). The GAO report noted that during fiscal years 2006 through 2010,

Federal agencies spent more than \$200 billion annually, on average, to purchase or lease equipment, with purchases accounting for 99 percent of this spending. GAO stated that this suggests that agencies may overlook the potential for savings by almost always purchasing when equipment is needed on a temporary basis. The GAO report focused on the lease versus purchase analysis, which they generally found inadequate in their selected sampling. While the only GAO recommendation for the FAR was that subpart 7.4 be revised to update the GSA contact information, some contracting officers suggested to GAO that they were uncertain about how and when to perform the analysis required in FAR subpart 7.4. The FAR Council welcomes all suggestions for revisions to FAR subpart 7.4 and, in particular, seeks input on the following questions:

- Is there a distinction between rental agreements and leases (not related to real property)?
 - o Are there uniform and recognized differences in the lengths of rental and leasing agreements? Do these lead to special funding considerations for the government?
 - o Are there specific differences in other terms and conditions, such as maintenance, warranty, insurance, taxes, storage, and transportation? What are the specific distinctions?

- FAR 7.402(a) and (b) provide circumstances indicating when the purchase or lease method is appropriate.
Should rent be added as a third method? If so, when is renting a more appropriate method than purchasing or leasing and in what way would it impact the determination of most effective procurement approach (e.g., cost savings and efficiencies)?
- Does short-term rental offer cost savings and efficiencies unavailable through leasing?
- What additional guidance might be provided at FAR subpart 7.4 to clarify when and how to perform the required analysis?

Dated: July 9, 2013

William Clark,
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